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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 0649-0799P

	Application Number	Filed
	09/944,341-Conf. #9771	September 4, 2001
	First Named Inventor: Tsuneo SATO et al.	
	Art Unit: 2628	Examiner: Aaron M. Richer

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant /inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 29,680

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

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July 16, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of 1 forms are submitted.

C/M 0649-0799P

Remarks Supporting Request for Pre-Appeal Brief Conference

Summary

The subject application is finally rejected (See, Final Rejection, mail date March 14, 2007). The Applicants have made numerous attempts to overcome the Examiner's basis for Final Rejection of the claims, that is the primary reference, U.S. Patent No. 5,809,213 to Bhattacharjia (hereinafter "the 213 patent"), applied under either a 35 U.S.C. § 102 or § 103 basis.

Applicants have attempted to overcome the Examiner's reliance on the 213 patent, focusing upon the clear lack of anticipation or suggestion, i.e., shortcomings of the 213 patent in response to the Examiner's arguments that Applicants' claimed invention is anticipated and or rendered obvious, in view of the 213 patent. Applicants respectfully assert that the Examiner's actions amounted to ***clear error*** in misconstruing the 213 reference, and or applying impermissible hindsight when inferring that the 213 reference at least anticipates Applicants' claimed invention. Applicants respectfully assert that the Examiner has improperly, construed the 213 reference, and or improperly inferentially read content from the subject application into the 213 patent, and has relied upon these improper bases to maintain the Final Rejection.

Applicants' Request

Applicants' request that a panel of Examiners formally review the legal and factual basis of the rejections in the above-identified application prior to the filing of an appeal brief. Appellants assert that the outstanding rejection is improper (now on appeal by virtue of the currently filed Notice of Appeal) is clearly improper based both upon errors in facts and the omission of essential elements required to establish a prima facie rejection.

The March 14, 2007 Final Rejection

The March 14, 2007 Final Rejection was issued by the Examiner and essentially restates the earlier basis asserted with the 213 patent against Applicants' claimed invention in the previous non-final rejection, despite the Applicants' attempts to

distinguish the claimed invention from the 213 patent. Applicants make a further attempt by responding to the Final Rejection, with additional distinguishing arguments (See, Reply after Final Rejection, June 11, 2007). The Examiner issues an Advisory Action.

The June 25, 2007 Advisory Action

The Advisory Action issued on June 25 essentially restates the earlier basis with regard to the 213 patent. However, apparently now the Examiner has misconstrued the argument that the Applicants' have continually made. The Examiner responds to his previous assertions that the 213 patent discloses "augmented sample points that are impossible to be interpolated, or at the very least impossible to be linearly interpolated", is clearly not compatible with proper claim interpretation for the purposes of examination by the Patent Office and good faith attempts for Response by the Applicants. In addition, the Examiner has misread what the 213 patent, in fact, discloses.

The 213 Patent

The 213 patent discloses a system for color correction. The 213 patent discloses that linear interpolation, when used with color transform reproduction functions requires that each of the pixel colors must be corrected by using the color calibration values stored in the memory. Due to the large number of pixels which must be color corrected, it is desirable to utilize a relatively fast technique for calculating the corrected color values. See, 213 Patent, col. 9, lines 25-28.

The 213 patent goes on to disclose that "one problem with the approach [for color correction] is that for greater accuracy in approximating nonlinear functions, linear interpolation techniques, such as tetrahedral interpolation require a relatively large set of sample points." See, 213 Patent, col. 9, lines 33-36.

Examiner's Assertions, in part, concerning the 213 Patent

The 213 Patent discloses"[A]ugmented sample points that are impossible to be interpolated, or at the very least impossible to be linearly interpolated..."

In response to the above argument, Applicants asserted, in part, "If the sample points were impossible to be linearly interpolated, as alleged by the Examiner, [the 213

Patent] would not suggest using a linear interpolator." See, Reply after Final Rejection, page 4.

Additionally, Applicants' assert that the 213 Patent discloses that "nonlinear interpolation methods generally provide better accuracy with fewer sample points than linear interpolation methods. Nonlinear interpolation methods, however, are computational expensive. See, Reply after Final Rejection, page 4.

Therefore, Applicants assert that merely providing disclosure that the 213 patent discusses using nonlinear interpolation methods does not necessarily mean that the sample points are impossible to be linearly interpolated, as required by Applicants' claimed invention.

Applicants' Assertions, in part, concerning the 213 Patent

Applicants have repeated asserted that nowhere in the 213 Patent is there any disclosure that the measured or augmented sample points are *characteristic points* as claimed. Quite to the contrary, the 213 Patent discloses a method of applying a nonlinear interpolation technique to a relatively small number of the measured sample values generated from the color image patches to provide a color lookup table having a larger number of calibration values stored therein. The mere fact one or more of the augmented sample points may, *in arguendo*, be a characteristic point as claimed is not equivalent to disclosing that the lookup table contains *only* characteristic points. The augmented sample points 74a-74k, as illustrated in Fig. 2A of the 213 Patent, clearly include *noncharacteristic points*. Therefore, a lookup table composed of characteristic points does not necessarily flow from the disclosure of the 213 Patent.

Additionally, Applicants assert that it is just such a problem with the 213 patent that Applicants' claimed invention seeks to correct. That is, such an excessively large multidimensional lookup table will be required for processing complicated color characteristics, and that such computation will be very labor intensive for a processor. The invention seeks to correct this aspect, among others, by obtaining precise color characteristic data without enlargement of the quantity of color characteristic data.

Independent claim 9 is reproduced for illustration purposes, below:

> Claim 9. (Original) A color management apparatus for converting supplied image data by using a lookup table of color characteristic data into output image data, said color management apparatus comprising:
>
> a lookup table which is composed of characteristic points which are points indicating the relationship between supplied image data and output image data which are determined to be impossible to be interpolated when a process for converting image data is performed; and
>
> image data converting means for converting supplied image data by using said lookup table composed of the characteristic points into output image data.

Conclusion

The Applicants respectfully assert that the 213 Patent fails to anticipate and or render obvious the claimed invention. Further, the Examiner has misconstrued the 213 Patent alleging that the claimed invention is anticipated and or rendered obvious by the 213 Patent. Accordingly, the 213 patent should not be applied against the current claims, and the Applicants' respectfully seek to have rejections based on the 213 patent withdrawn, and not withstanding any other rejections, prosecution reopened or a notice of allowance issued for the pending claims.